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August 10, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 20, 2007

Case Number: TSO-0493

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter "the individual") for access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual should be granted access authorization. As discussed below, I find that access authorization should not be granted in this case.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) Office, informing the individual that information in the possession of the DOE created a substantial doubt pertaining to her eligibility for access authorization in connection with her work. In accordance with 10 C.F.R. § 710.21, the notification letter included a statement of the derogatory information causing the security concern.

The security concerns cited in the letter involve the individual's judgment and reliability. Specifically, the letter cites a November 13, 2006 evaluation by a DOE consultant psychiatrist (consultant psychiatrist), finding that the individual is suffering

1/ Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

from Borderline Personality Disorder² and Temporal Lobe Seizure Disorder, currently in remission. According to the letter, in the consultant psychiatrist's opinion the Borderline Personality Disorder is an illness or mental condition which causes or may cause a significant defect in the individual's judgment or reliability. This gives rise to a security concern under 10 C.F.R. § 710.8(h). The letter further cites several incidents in which the individual was hospitalized for psychiatric treatment during the period 1999

2/ In making this diagnosis, the consultant psychiatrist referred to the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition Textual Revisions (DSM-IV TR)*. With respect to Borderline Personality Disorder (301.83) the DSM-IV TR states the following:

A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by 5 (or more) of the following:

1. Frantic efforts to avoid real or imagined abandonment.*
2. A pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation.
3. Identity disturbance: markedly and persistently unstable self-image or sense of self.
4. Impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating).
5. Recurrent suicidal behavior, gestures, or threats or self mutilating behavior.
6. Affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).
7. Chronic feelings of emptiness
8. Inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights).*
9. Transient, stress-related paranoid ideation or severe dissociative symptoms.

The consultant psychiatrist did not consider the symptoms marked by an asterisk to be applicable in the instant case.

through 2002, including at least four suicidal overdoses requiring emergency medical care, and other suicidal threats. The letter also states that the individual has been in psychotherapy with more than seven counselors or psychiatrists, has been diagnosed with bi-polar disorder, and has been treated with multiple psychiatric medications. Further, at age 20, she was hospitalized for three months with depression.

The notification letter informed the individual that she was entitled to a hearing before a Hearing Officer, in order to respond to the information contained in that letter. The individual requested a hearing. I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual testified on her own behalf, and presented the testimony of the following personal witnesses: her husband, her supervisor, two coworkers/friends, and her sister. She presented expert testimony from a forensic counselor who performed an evaluation of the individual (individual's evaluator). The DOE Counsel presented the testimony of the DOE consultant psychiatrist.

II. Hearing Testimony

I have summarized below the testimony of the witnesses at the hearing.

A. Individual's Supervisor; Coworkers

1. Individual's Supervisor

The individual's supervisor stated that she has known the individual, who is her assistant, for two years. She works in close proximity with the individual. The supervisor testified that the individual interacts well with her peers, even those who may be irrational. She has never seen the individual in an unusually stressful situation, and has only observed her in normal, work-related stress. She testified that she has never seen the individual overreact or act impulsively. She has never seen the individual exhibit any paranoid behavior or any fear of being left alone. She reported that on one occasion she counseled the individual on how to handle a work-related conflict with a co-worker. The supervisor indicated that she was aware of the prior abusive behavior to which the individual was subjected. The supervisor testified that after the administrative review process arose, the individual mentioned her previous suicide attempts, but

did not elaborate on the circumstances or mention the borderline personality disorder diagnosis. Transcript of Hearing (Tr.) at 37-53.

2. Individual's Co-workers

Co-worker #1 stated that she worked with the individual for approximately two years, during the period April 2005 through April 2007, and would see her about four hours a day. She currently does not work with her. This witness testified that the individual was friendly towards the staff, had good rapport with colleagues, and did not experience any major feuds or conflicts. She never saw the individual lose her temper, be impulsive, or act in unexplained ways. Currently, they are not regular social friends. When they first started working together they socialized briefly, but she has not recently socialized with the individual. This co-worker had no information regarding prior psychiatric issues, other than that the individual was abused by her ex-husband. She does not know the individual's current husband. Tr. at 60-71.

Co-worker # 2 stated that she has known the individual for about two years and on average sees her for about 15 minutes a day. She indicated that the individual copes with stress in much the same way as other workers, and that she has never seen her display any unusual behavior, conflicts, or outbursts. Outside of work, she sees the individual only infrequently. As of one year ago, she and the individual would have lunch together every two weeks, but in the last few months they have only had lunch together on one occasion. The last time she was at the individual's home was in November 2006, about seven months prior to the hearing. With respect to her past, the individual told her of an abusive boyfriend, and stress with her husband's children. The individual did not tell her of her suicide attempts. She stated that she has spoken to the individual's husband, and is aware of no stress in their marriage other than that associated with her husband's children. Tr. at 76-87.

B. The Individual's Family

1. The Individual's Sister

The individual's sister now lives in a city more than one thousand miles from the individual, and has therefore seen her only two times in the last few years. They currently keep in touch by phone and e-mail. The sister testified that she had not seen any of the behaviors that the DOE consultant psychiatrist had associated with borderline personality disorder, including impulsivity, low self-

esteem, paranoia, mood swings, emptiness, despair and spending sprees. She based this testimony in particular on her observations of the individual during a five week period about five years ago, when the individual left her last abusive relationship and came to live with her. She stated that she was aware of the individual's prior abusive relationships, but indicated that she was not in close contact with her during that period of her life. She has never met the individual's husband, but has spoken to him on the phone, and believes him to be a good husband for the individual. Tr. at 94-119.

2. The Individual's Husband

The individual's husband stated that he and the individual have known each other for about two years and have been married for one and one-half years. They spend much of their time together. He has not seen the individual display any of the behaviors associated with borderline personality disorder that were identified by the DOE consultant psychiatrist, including impulsivity, and suicide attempts. He was aware that she had "issues with previous husbands." He was also aware that she had been treated for depression and abuse. However, he did not know any specifics about the treatment. He was not well-informed about the medications she had used in the past for her mental condition. Although he was aware that she had attempted suicide, he could not give any specifics about these incidents. As an example of a time when he saw the individual under considerable stress, the husband cited an incident when his son behaved in a verbally violent way towards the individual. He stated that the individual did not raise her voice, and that her voice was firm. According to the husband, the entire event took "just a couple of minutes." The only other stressful situation with respect to the individual cited by the husband was that of the hearing itself. In this regard, the husband stated that there was no outward manifestation of the individual's nervousness, other than her statement to that effect. He indicated that in the two years they have been together he has never seen an instance in which she experienced behavioral changes caused by anxiety. Tr. at 9-30.

C. The Individual

The individual testified that she moved to the city where she currently lives and works about five years ago, and that she has been in her current position with the DOE contractor for about two years. Most of her testimony involved an effort to point out errors in the written report of the DOE consultant psychiatrist. The

purported errors were of two kinds. First, the individual claimed that the DOE consultant psychiatrist made minor factual errors. For example, he incorrectly stated her work site, cited an incorrect date for one of her marriages and gave an incorrect name for her first husband. Tr. at 194, 200, 212-13.

The second type of error that the individual pointed to involved what she considered to be inaccuracy that affected the overall diagnosis made by the consultant psychiatrist. She believed that the DOE consultant psychiatrist exaggerated some events in her life and ascribed too much significance to them. For example, in referring to the fact that the individual had an abusive relationship with her own son, the DOE consultant noted that her son attacked her with a baseball bat when he was 12 years old. The individual stated that her son only hit her with a plastic bat, so that it was not as severe as the consultant psychiatrist made it sound, although the individual did admit that she was injured. Tr. at 207-08, 265. She denied impulsive shopping sprees, which she believed the DOE consultant psychiatrist factored into his diagnosis of borderline personality disorder. Tr. at 209-10. She claimed that the consultant psychiatrist noted incorrect dates for an assault and battery and protective order with her abusive partner. She believed that this error does not allow for a fair picture of the build-up of the abuse. Tr. at 223-24.

The individual stated that the DOE consultant psychiatrist cited an incident in which she purportedly destroyed her partner's \$1,200 guitar. The individual claims the guitar was only worth \$200. The individual also referred to her psychiatric hospitalization. She believes that the DOE consultant psychiatrist drew an incorrect conclusion about the severity of her situation from the fact that the hospitalization lasted for a relatively long period, three months. She states that this hospitalization took place during the 1980s when such long stays were not uncommon, and further noted that she was not confined or restrained, and could leave at any time. Tr. at 228-29.

The individual also cited the DOE consultant psychiatrist's statement that she had "filled a bathtub with lighter fluid." The consultant psychiatrist used this as part of the evidence of the individual's suicidal behavior. The individual testified that she has never filled a bathtub with lighter fluid, and that she did not report to the consultant psychiatrist that she had done so. When asked if she had told him that she had put any lighter fluid in a bathtub, she replied, "I don't recall telling him that." When asked if she had said anything to him regarding lighter fluid, she stated

"I don't think we discussed anything. . . [It was] coming probably from my abuser." Tr. at 241-42. The individual's contention here is that the consultant psychiatrist wrongly diagnosed her condition based on this type of error about her suicide attempts.

The individual did not testify at any length about her current situation, other than to say that when she discontinued her psychiatric medications, her mood stabilized, and that she has had no mood swings since early 2003. She believes that her mood swings were caused by those psychiatric medications. Tr. at 243.

D. Individual's Evaluator³

This witness identified himself as a "certified forensic examiner" with a master's degree in counseling. He testified that based on the individual's "functioning today," he did not find evidence of borderline personality disorder. He did not believe that there was substantiation for a diagnosis of borderline personality disorder as set forth in the DSM-IV TR. It was the opinion of this witness that the diagnosis of borderline personality disorder does not apply here because the individual's behavior is "better otherwise explained as a result of the trauma in her history, and the fact that at times in her life she has been the victim of domestic violence" Tr. at 143-44. He testified that all of the symptoms of borderline personality disorder, including the individual's feelings of emptiness or inappropriate anger could arise from her abusive relationships. Tr. at 149. Moreover, he testified that since there is no current manifestation of these behavior traits, borderline personality disorder is not the best diagnosis. He believed that if there were a chronic personality disorder, "you wouldn't see an individual presenting for an assessment without showing any indication of that." Tr. at 154. He further stated that if an individual has borderline personality disorder, "I don't think we would be seeing no presence of it in a today picture." *Id.* However, he testified that if the individual was involved in another bad relationship, the prior behavior patterns could re-emerge. Tr. at 166-67.

^{3/} This witness prepared a written report dated June 4, 2007, setting forth his evaluation.

E. The DOE Consultant Psychiatrist

The DOE consultant psychiatrist provided his views of the testimony of the individual's evaluator. The consultant psychiatrist first addressed the evaluator's contention that the individual's suicidal and other dysfunctional behaviors could be better explained by the fact that she was in a series of abusive relationships, rather than by borderline personality disorder. It was the consultant psychiatrist's testimony that "as soon as you say a series and history of abusive relationships you get into the essence of borderline personality disorder-namely a pattern of unstable relationships. That's the hallmark of borderline personality disorder." Tr. at 174. The consultant psychiatrist further stated in this regard:

things I think distinguish her borderline personality disorder from . . . the more simply understandable reaction to an individual episode of domestic abuse would be, first of all, that there's a recurrence, that she has had a recurrent pattern of unstable relationships, as I found in my evaluation, and not all those were unstable because of abuse. One of them I called unstable because she married after knowing the person for 16 days and then they divorced within a month or two after. . . . The other thing is the severity of the symptoms. . . . I believe in [the individual's] case she's had police called 10 times for suicide attempts, at least . . . four overdoses. . . . she filled the bathtub with lighter fluid, another time when she was poised on the porch to jump. . . a manipulative type of suicide attempt, which often occurs in borderline personality disorders, but nonetheless very lethal.

Tr. at 176.

With respect to the evaluator's observation that the individual did not present any symptoms at the time he interviewed her, and that this would negate the diagnosis of borderline personality disorder, the consultant psychiatrist testified that the absence of symptoms was not surprising. "With the diagnosis of borderline personality disorder, somebody can be near death one day and looking like they could run the hospital the next day. . . . So the fact that she doesn't have any symptoms currently would not exclude the diagnosis." Tr. at 178.

The consultant psychiatrist also addressed the individual's contention that the errors in his written report rendered the evaluation as a whole unreliable. He noted that there were some typographical errors and minor errors of fact in the report, such as where the individual worked or the first name of her first husband. He indicated that there was "nothing in the [small] errors that would be clinically very significant for me, like tend to dramatically alter my diagnosis or . . . my opinion." Tr. at 255.

The consultant psychiatrist then turned to a review of the purportedly more substantive errors raised by the individual. I consider below his responses to a number of the errors claimed.

The individual referred to the consultant's psychiatrist's statement that her son hit her with a baseball bat. She indicated that it was a plastic bat, and not a true baseball bat. The consultant psychiatrist testified that this correction was in her favor and reduced the significance of the incident. Tr. at 265. The individual objected to the consultant psychiatrist's observation that she had engaged in impulsive spending when she purchased \$1,000 worth of clothing. She contended that she had planned and budgeted for this purchase. The consultant psychologist testified that this episode should not be considered as part of the borderline personality diagnosis. Tr. at 269-70. With respect to the individual's claim that the consultant psychiatrist noted incorrect dates for assault and battery charges culminating in a protective order with her prior partner, the consultant psychiatrist testified that the chronology of the facts themselves is not important clinically and would not change his opinion. Tr. at 277-78, 279.

In connection with the incident in which the individual stated that the value of her partner's guitar that she destroyed was \$200 and not \$1200, the consultant psychiatrist stated that the key was the "marked reactivity and mood." Tr. at 299. With respect to the individual's three-month stay in a psychiatric hospital, the consultant psychiatrist testified that he was aware that it was a voluntary stay and that patterns of hospitalization have changed since that time. Tr. at 262-63.

On the subject of the lighter fluid incident, the consultant psychiatrist noted that he had in one instance stated that the individual had "filled" the bathtub with lighter fluid and in another reference indicated that she had "put lighter fluid" in a bathtub. Evaluation at 7, 11. The individual did in fact admit

that she put lighter fluid in the bathtub and attempted to start a fire. Tr. at 283. The consultant psychiatrist did not believe this inconsistency in his report was any grounds for a change in his diagnosis. Tr. at 283.

The consultant psychiatrist agreed that some of the information he included in his report was not accurate, however, overall, it was his opinion that in the past, the individual had met the diagnostic criteria in the DSM-IV TR for borderline personality disorder. Tr. at 303-19. The consultant psychiatrist stated that if the only information available to him was from the last five years, he would not have made the diagnosis of borderline personality disorder. Tr. at 320. In this regard, he indicated that there is the possible attenuation of symptoms of this condition, but not remission from the disease itself. Tr. at 321-22. He testified that the prognosis as far as "flare ups" is risky for many years, "even after the person is doing well by their current mental status." Tr. at 322. He testified that there is a "positive trajectory" for this individual right now and that she has the support of family and friends and a good work relationship. Tr. at 325. However, in his opinion, the individual needs an ongoing therapy relationship. He expressed concern over the fact that the individual had stopped all counseling. Tr. at 341.

The consultant psychiatrist further testified that "if her marriage stays great and her stepson makes up with her and her husband's health stays good, her prognosis for catastrophic reaction to interpersonal stress is low. If catastrophic stress hits her, I think the risk is high, catastrophic, like if he became abusive and that same pattern came up. If the stepson became abusive and that same pattern came up, that would be the hardest for her to deal with and more likely to relapse into the symptoms she had before." Tr. at 329-30. In this regard, the consultant psychiatrist raised a concern that there was a possibility that this marriage would not last five years, especially given the fact that the individual has been twice married previously and her husband has had one prior marriage. Tr. at 331-32. He believed the odds of a crisis in their lives were "fairly high," and that the break-up of her marriage "would push her over the edge into severe symptoms." Tr. at 331-32. He testified that there is a "pretty good possibility" that her borderline personality symptoms could recur. Tr. at 334. He believed that therapeutic counseling for the disease and the passage of time during which there are no borderline personality

symptoms and during which the marriage remained intact diminishes the risk of recurrence of the symptoms. Tr. at 335-36.⁴

III. Applicable Standards

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing* (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

^{4/} The consultant psychiatrist testified about a further concern cited in the notification letter regarding the individual's "temporal lobe seizures," which occurred last when she was about 16 or 17 years old, approximately 28 years ago. Tr. at 344. He stated that the individual could have outgrown the seizures. The individual has denied that she continues to suffer from them. I will not give further consideration as to whether the possibility of seizures poses a continuing Criterion H security concern, given that the individual has not resolved the concerns associated with the diagnosis of borderline personality disorder.

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing* (VSO-0005), 24 DOE ¶ 82,753 (1995), *aff'd*, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. Analysis

The issue in this case is whether the individual has mitigated the Criterion H security concerns related to borderline personality disorder, a mental condition that, in the opinion of the DOE consultant psychiatrist, causes or may cause a defect in her judgment or reliability. The individual's approach in this regard has been to attempt to establish that the DOE consultant psychiatrist's diagnosis is incorrect. She challenges the consultant psychiatrist's diagnosis by claiming that his written evaluation is so fraught with errors, large and small, as to be overall unreliable. In this regard, after the hearing, she submitted a redacted version of the psychiatrist's written evaluation with her corrections to the report (hereinafter post-hearing submission). Secondly, she has offered as support for her position the testimony of her own expert, a forensic evaluator, who came forward with a different diagnosis. Thirdly, she has called witnesses to establish that her current pattern of behavior is a normal one, and that her past abnormal behaviors can be attributed to abusive relationships which are simply no longer part of her life. As discussed below, I find that the individual has not resolved the Criterion H concern.

A. Reliability of the Consultant Psychiatrist's Report

I am not at all impressed by the individual's attempt to discredit the consultant psychiatrist's report by pointing out alleged errors.

First, I address the matter of the post-hearing submission. The document filed by the individual did not reflect the agreement we reached at the hearing about what she would be permitted to submit. Instead of simply pointing out the typographical and other minor alleged errors of fact, as we agreed, the individual submitted a fully-edited version outlining all her objections to the report. Tr. at 205-06, 246, 247-48. I will not accept this version of the report for the purpose of allowing it to enlarge the substance of the individual's complaints about the consultant psychiatrist's diagnosis. The individual had ample opportunity to make those

points at the hearing. Tr. at 238, 245. Moreover, any new substantive points that might be raised will not have been tested by cross examination or by a response from the consultant psychiatrist. Accordingly, I will give no further consideration to the substantive points the individual has included in the post-hearing submission. I will base my analysis here only on the testimony regarding substantive errors given at the hearing that was given under oath, tested by cross examination and which received a response from the DOE consultant psychiatrist.

With respect to the typographical and other minor errors, I note that several such corrections do appear in the post-hearing submission. I do not believe that either individually or when taken as a whole these errors suggest in any way whatsoever that the DOE consultant psychiatrist's report is less than fully professional, well thought-out and a reliable, indeed valuable, piece of evidence in this case. The following are two examples of such errors. The individual points out that the report does not indicate her correct work site. The individual also points out that the DOE consultant psychiatrist indicated that she married her first husband when she was 21, whereas she states that the marriage took place when she was 23. I fail to see why these errors are in any way meaningful in the context of the instant case. Errors of this nature do not convince me that the report as a whole is invalid. They are trivial. Pointing them out was frivolous and a waste of time. Accordingly, I will not give any further consideration of the post-hearing redaction of the consultant psychiatrist's report.

Moreover, I have reviewed the consultant psychiatrist's testimony responding to the purportedly larger errors, for example the errors concerning the plastic baseball bat, the \$200 guitar, the lighter fluid incident, and the incorrect dates regarding assault and battery by the individual's abusive partner. In every instance, the consultant psychiatrist persuasively testified that these rather minor corrections to the record did not make any overall difference in his clinical opinion. As a matter of common sense, I cannot see how these rather trivial objections that the individual raises could overcome or negate the large, very serious personality concerns and irrational behaviors present here.

After a full review of the consultant psychiatrist's report and his testimony, I find the witness and his report to be credible, highly reliable and an extremely useful resource here. There is simply no cause for concern regarding the credibility or

expertise of the consultant psychiatrist, or the trustworthiness of his report. With this determination in mind, I turn to an analysis of the rest of the testimonial evidence presented at the hearing.

B. The Persuasiveness of the Opinions of the Individual's Forensic Evaluator and the Consultant Psychiatrist

As stated above, the individual's evaluator was of the opinion that there was a better explanation for the individual's behavioral symptoms than borderline personality disorder. Disagreement over the labeling of her condition aside, the key here is whether the individual is likely to exhibit in the future the admittedly unstable behaviors, including abusive, unsuitable relationships, repeated psychiatric hospitalizations, overdoses and other suicide attempts which demonstrate poor judgment and reliability. The evaluator indicated that "in the last couple of years, what we see is a real change in her behavior, reported both by objective sources, namely her supervisor. . . . After all, this really gets to how does this person and would this person function and continue to function in an occupational setting. And she seems to be doing very well and has not exhibited that kind of instability now for a significant period of time. . . . I think people can get well and that they can improve and . . . I think one of the reasons why we see this period now is that she's not in an oppressive situation, and we're seeing the results of how she can behave and manifest when that's the case." Tr. at 179-80.

I do not find this reasoning to be sufficient to overcome the security concerns here. First, the fact that the evaluator saw the individual at a moment when she was exhibiting no dysfunctional symptoms does not end the inquiry. As the consulting psychiatrist pointed out, since the individual is seemingly now in a stable relationship, her symptoms have abated. However, as the consultant psychiatrist also indicated, these symptoms could recur if her current marriage deteriorated. As discussed more fully below, the evaluator's failure to fully analyze the possibility of a recurrence and the effects it might have on the individual's behavior is, in my opinion, a serious failing.

Moreover, the evaluator did not appear to be fully aware of the suicidal history of this individual. For example, he stated, "I am minimally aware of her history," and recalled only two such events. Tr. at 143-44. However, the record here indicates that there were at least four suicidal overdoses and two suicidal threats. DOE

consultant psychiatrist's report at 13. I find that the DOE consultant psychiatrist had an in-depth knowledge of this individual's history, and seemed more familiar with her background. Accordingly, I believe his opinion is entitled to more weight.

Moreover, as the DOE consultant psychiatrist pointed out, the evaluator gave no real explanation for the individual's past problems and past symptoms, which were very severe, including five psychiatric hospitalizations and numerous suicide attempts. Tr. at 328. To deny the importance of or provide any real explanation for these severe symptoms, other than to cite another symptom, namely the abusive relationships themselves, is not satisfactory or convincing. See Tr. at 327.

In my view, the evaluator's opinion does not resolve the key question: whether the individual is likely to display errors in judgment and reliability in the future due to her mental condition. The fact that she is now performing well at work does not fully address this question. If she is not stable in her personal relationships, the dysfunctional behavior could well re-emerge. Secondly, although the evaluator believes that the individual has "gotten better," I see little objective evidence that he could have had from which to draw such a conclusion. The evaluator cited a "collateral interview" he had with the individual's supervisor as support for the individual's current stable behavior. In this regard, the evaluator indicated that the supervisor told him about the individual's noteworthy performance on the job. Tr. at 160. This limited picture of the individual is not very persuasive. From my own review of the supervisor's testimony at the hearing, I find she does not know very much about the individual from her own observation and she had little to say about the individual's private life, seemingly because she did not have any deep knowledge about the individual's husband or their marriage. She referred to her knowledge of the individual's personal life as a little bit more detail than "just general chitchat." Tr. at 49. Moreover, the fact that the individual may behave in a stable manner at work does not end the inquiry here, since those holding a security clearance must be counted on to exercise good judgment both on and off the job. *Personnel Security Hearing*, (Case No. VSO-0476), 28 DOE ¶ 82,827 (2001).

In any event, I see little evidence that would allow me to accept the evaluator's view that any improvement that the individual has made will last for a significant period into the future. I was more

convinced by the opinion of the consultant psychiatrist that the prognosis here is not clear and that there is still a likelihood of a recurrence of the past behavior, given the fact that the individual is not engaged in any therapy and that there has been a relatively short period of the absence of symptoms.

Thus, overall, I am not convinced by the evaluator's position that the individual did not have borderline personality disorder and that, due to a improvement in her situation, she has now recovered from whatever personality difficulty she did have. In this regard, I note especially the evaluator's testimony that if the individual did become involved in an unstable situation again, the same dysfunctional behavior could occur. Tr. at 166-67. I believe that the consultant psychiatrist's diagnosis here is more convincing than that of the evaluator, as is his overall view that there is still a concern regarding the individual's stability, judgment and reliability.

C. Overall Persuasiveness of the Testimony of the Individual and Her Personal Witnesses

The time frame that is covered in this case is about 40 years, dating from events beginning in 1968, when the individual was seven years old, at which time the individual states that a neighbor began to sexually molest her. The relevant events continued for a number of years, including two abusive relationships, a marriage lasting only two months which the individual entered into after knowing the man in question for only 16 days, numerous suicide attempts, hospitalizations, therapy and diagnoses of mental disease. Yet, no witness had a complete picture of this individual. Except for the sister, no witness could testify about a period that covered more than two years. No witness could compare the individual's past and current status.

Moreover, the witnesses who were called in this case and could speak about the individual's current state had only a very limited picture of her, particularly with respect to her personal life. No witness, other than the individual's sister had known her for more than two years. The individual's sister had moved to a distant city at least two years ago, and therefore had not seen the individual in her current purportedly stable married situation. Thus, there was not a single witness who could give a coherent picture of the individual's status for the four and one-half year period during which she maintains she has been symptom-free. Tr. at 243.

Moreover, her co-workers were not close with her on a social basis and none was really knowledgeable about on her current life with her husband or her entire abusive, dysfunctional past. I did not find their testimony particularly useful regarding the individual's personal life. Her supervisor stated that she knew the individual's husband, although she did not provide any important details about the individual's current personal life. Tr. at 49. The individual's sister was more aware of the individual's difficult abusive situation than some of the other witnesses, but was not with her during the period of abuse, and was not well-informed as to the individual's current situation. She only knew the individual's husband through phone conversations. Thus, I was not especially confident about the overall picture of the individual or that of her current personal life that the co-workers, supervisor or sister were able to give me.

The husband has only known the individual for two years. Thus, his experience with her is also very limited. I was not particularly convinced by his testimony. His responses to many questions provided limited information, and often consisted of only one word. He was not forthcoming with details about their relationship and their lives. For example, he was guarded about discussing any stress or anger between them. As an example of stress, he pointed out that the hearing created stress for the individual, but stated there was no action on her part from which he could detect it, other than that she spoke of it. He also mentioned stress arising from a violent interchange between his stepson and the individual. I find it hard to believe that in the two years of their relationship he could find no example of stress or anger between the two of them or between the individual and others that he could point to, much less discuss in detail, besides these two events. In particular, the husband seemed very reticent regarding the problems between the individual and his children. I would have been more impressed with the candor of his testimony had he elaborated on this point and how the individual handled the stress of the tension this created between them. I note that the husband stated "we've had some heated arguments." Tr. at 17. Yet, even when he was pressed to describe some of the pressures between them and the individual's reaction to those pressures, he was not forthcoming and referred only to the stress of the hearing itself and the interchange with his stepson.

I am simply not convinced that this is the extent of the disagreements and conflicts between the individual and her husband. Given the fact that the DOE consultant psychiatrist believed the

stability of the individual's mental condition is intimately tied to the viability of her marriage, the testimony of the husband is especially important. His unforthcoming testimony did not advance the individual's position that she is now in a stable personal relationship. In any event, if the individual had called her stepdaughter, with whom she has purportedly reconciled, as well as her own children as witnesses to corroborate the facts about her current relationship with her husband, I might have been more convinced. The individual has therefore not brought forward sufficient information to convince me that she has not engaged in any behaviors associated with borderline personality disorder in the last four and one-half years.

Furthermore, the fact that the individual failed to call her family therapist, who was originally on the witness list in this case, represents a serious gap in the testimony here. The family counselor could have provided some objective, expert testimony regarding the individual's current mental status, the status of her marriage, and her ability to deal with stress and anger. This is particularly important given the fact that the therapist was familiar with the individual under the circumstances surrounding the abuse by the stepson at the very time she was experiencing them.

Moreover, the individual's overall testimony was lacking here. She spent a great deal of effort attacking the evaluation of the DOE consultant psychiatrist. The individual's objection to the consultant psychiatrist's characterization of the lighter fluid incident is a particularly vivid example of her ill-conceived attempts to shift the focus of this case from her own unstable behavior to the behavior of others. Yet, the individual devoted comparatively little time to testifying about her own current mental condition, and how she has changed her life. I have no detailed testimony from the individual as to her current coping skills, what she would do if her current marriage failed, or why she is not actively engaged in therapy. This is, in my view a serious failing, since I am not left with a clear picture from the individual's own testimony about how she sees herself currently.

V. CONCLUSION

As stated above, in cases pertaining to security concerns under Part 710, it is the obligation of the individual involved to demonstrate that she is fit to hold a security clearance. Thus, the individual's approach here, an attempt to show that the consultant

psychiatrist was not competent, did not serve her well. I believe that the diagnosis of borderline personality disorder by the consultant psychiatrist here is convincing. However, even if, as postulated by the evaluator, the individual here is simply a person whose dysfunctional behavior was caused by repeated incidents of unstable, abusive relationships, based on the record here, I am not persuaded that the individual's personal life is symptom-free as she contends, or that she is unlikely to have a recurrence in the future.

To that end, the individual would have been better served had she brought forth strong witnesses who know her well, and who could testify in detail about the last four and one-half years, during which she maintains she has led a stable life-style. She would also have been better off by convincing me through her own candid testimony that she is now in a stable situation, that she needs no further therapy, and that there will be no return to the prior dysfunctional pattern.

As the foregoing indicates, I find that the individual has not resolved the Criterion H security concerns cited in the notification letter. It is therefore my decision that this individual should not be granted access authorization.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: August 10, 2007